

MATTHEW RIGHETTI, ESQ., SBN 121012
JOHN GLUGOSKI, ESQ., SHN191551
RIGHETTI GLUGOSKI, PC
456 Montgomery St., Suite 1400
San Francisco, CA 94101
Telephone: (415) 983-0900
Facsimile: (415) 397-9005

REUBEN D. NATHAN, ESQ. SBN 208436
NATHAN & ASSOCIATES, APC
600 W Broadway Ste 700
San Diego, CA 92101-3370
Telephone: (619) 272-7014
Facsimile: (619) 330-1819

ROSS CORNELL, ESQ., SBN 210413
111 W. Ocean Blvd., Suite 400
Long Beach, CA 90802
Telephone: (562) 612-1708
Facsimile: (562) 394-9556

DAVID BORGEN, ESQ., SBN 99354
JAMES KAN, ESQ., SBN 240749
GOLDSTEIN BORGEN DARDARIAN & HO
300 Lakeside Drive, Suite 1000
Oakland, CA 94612-3536
Telephone: (510) 763-9800
Facsimile: (510) 835-1417

MICHAEL MALK, ESQ., SBN 222366
MALK LAW FIRM
1180 S. Beverly Dr., Suite 302
Los Angeles, CA 90035
Telephone: (310) 203-0016
Facsimile: (310) 499-5210

Attorneys for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADAM SHAW, PETER GOLIGHTLY,
JUSTIN TURNER and JOSHUA
STANSFIELD as individuals and on behalf
of all others similarly situated and the
general public,

Plaintiffs,

v.

WIZARDS OF THE COAST, LLC,

Defendant.

Case No.: 5:16-cv-01924

**DECLARATION OF JUSTIN TURNER IN
SUPPORT OF PLAINTIFFS' MOTION FOR
CONDITIONAL CERTIFICATION AND TO
FACILITATE NOTICE UNDER 29 U.S.C. § 216(b)**

1 I, JUSTIN TURNER, hereby declare as follows:

2 1. I am a named Plaintiff and class representative in the within collective and class action
3 for the purpose of recovering unpaid wages, overtime and penalties owed to me and other Judges by
4 Wizards.

5 2. I have personal knowledge of the facts stated in this declaration, and I could and would
6 competently testify in conformity with those facts if called up to do so.

7 3. I currently reside in St. Petersburg, Florida.

8 4. I have worked as a judge for Wizards of the Coast, LLC (hereinafter "Wizards") in
9 connection with the collectable card and fantasy roll playing game Magic: the Gathering (hereinafter
10 "Magic") as Magic judge for Wizards from 2010 to present date.

11 5. Work as a judge falls into 3 general categories: (1) time spent obtaining and maintaining
12 judge certification required by Wizards; (2) time spent judging at Wizards' Magic sanctioned events
13 (as defined below in paragraph 13), and (3) time spent preparing for judging at Wizards' Magic
14 sanctioned events.

15 6. Most, if not all, Magic judges start as Magic players (i.e., Wizards' customers). From
16 the time I decided to become involved as a Magic judge, Wizards and its agents told me that Magic
17 judges are "volunteers" and were/are a part of a "non-profit organization." Many other Magic judges
18 that I communicated with regularly regarding their status as "volunteers" for Wizards shared the same
19 belief about being "volunteers" for a "non-profit," which was also based on statements made to them
20 by Wizards. It is now my understanding that there was never a non-profit involved in our activities as
21 Magic judges. I believe Magic judges were duped by Wizards to provide work to benefit Wizards
22 business enterprise. Wizards entire platform for selling cards to customers is predicated on Magic
23 judges' knowledge and ability to enhance the gaming experience.

24 7. I became a Magic judge in February 2010 as a level 1 Magic judge, in September 2010 I
25 became a level 2 Magic judge, and in September 2011 I became a level 3 Magic judge.

26 8. Being a Magic judge allows me to work as a judge at Magic events in which Magic
27 players compete for points and prizes.

28 9. I have worked as a Magic judge all over the United States, including approximately 130
Magic events from the years 2011 to 2017.

10 10. At approximately 30+ of the Magic events I worked since 2010 were multi-day events
that required air travel. I estimate that I have worked at least 70+ Magic events that were single-day
events.

1 11. When I decided to become a Magic judge, Wizards told me that Magic was the most
2 prominent organized play program in the world. Wizards instructed me to play my role as a volunteer,
3 and to follow all of Wizards' guidelines. Wizards made me understand that being committed to
4 learning all of the Magic rules and policies was instrumental in providing Magic players with the
5 experience they deserve and to ensuring that I could provide Magic players with the comprehensive
6 Wizards' gaming experience. I trusted Wizards and followed the instructions I was provided by them
7 and their agents.

8 12. Based on my years of experience as a Magic judge, I know what Magic Judges do, how
9 much time they spend performing those duties, and how Wizards controls or regulates those duties
10 without properly paying judges for their work performed. In addition, I know about the experiences of
11 other Magic Judges from regular conversations I have had with hundreds of other Magic judges and
12 from participating in online discussions about Magic gameplay, judging and Wizards' policies.
13 Examples include engaging in internet relay chat through southeast regional groups wherein Magic
14 participants regularly ask Magic policy-related questions and the rules surrounding Magic to ensure I
15 actively maintained the knowledge Wizards required of me and others to be Magic judges.

16 13. Not anyone can be a Magic judge. In fact, Wizards sets and enforces strict
17 requirements in order for an individual either to become a judge or move up in judge level.
18 The most basic judge level is level 1. Wizards' requires level 1 judges to judge a minimum of 2
19 events, which requires at least 8 hours. It also requires Level 1 Magic judges to take a written test
20 which is approximately 2-3 hours in length and requires 20-30 hours of study time. Level 1 Magic
21 judges also spend 10-20 hours being mentored by a level 2 Magic judge and spend a minimum of 1
22 hour per week engaged in non-judging activities that contribute to helping Wizards build the Magic
23 community. Some examples of community building activities that I have done include attending
24 conferences, presenting at conferences, answering policy and rule questions on online resources,
25 advising other Magic judges on how to advance, and overseeing the certification of judges at both level
26 1, level 2 and level 3. In order to become a level 1 Magic judge on or around 2005, I spent at least 30
27 hours of study and training.

28 14. Becoming a level 2 Magic judges was also difficult and time-consuming because I had
to learn and pass comprehensive testing on over three hundred (300) pages of detailed written
materials, including the Tournament Rules, the Comprehensive Rules, and the Infraction Policy Guide.
Wizards policies also required me to work enough events as a level 1 judge to obtain the approval and

1 recommendation of other higher level judges. I estimate that I spent at least 60 more hours of study
2 and training over a 12-month period of time to become certified by Wizards as a level 2 judge.

3 15. Continuing as a Magic judge also requires specialized training and skill in a complex set
4 of rules and constantly changing policies. Wizards' updates and/or changes its policies about every
5 three months, and I and other judges are/were required to spend the time necessary to learn and stay
6 apprised of policy changes so that we can implement them into our work as judges. It takes me at least
7 10 hours each quarter to read, get trained on, and stay apprised of policy changes implemented by
8 Wizards regarding Magic gameplay and judging.

9 16. In addition to obtaining or maintaining certified judge status, I have spent hours
10 working as a judge at Wizards' Magic sanctioned events. At Wizards' Magic sanctioned events my
11 duties and the duties of hundreds of other judges I've observed, consisted primarily of the following
12 work activities: setting up chairs and tables for players, collecting players' entry fees, performing
13 "deck checks" to ensure players' cards comply with Magic rules set by Wizards, answering players'
14 questions, recording gameplay outcome information into Wizards' tracking software [Wizards Event
15 Reporter, DCI Reporter], making decisions to resolve disputes between players, recording dispute
16 outcome information into Wizards' tracking software, recording gameplay information into Wizards'
17 tracking software, overseeing gameplay, picking up and taking out trash left by Magic players,
18 breaking down tables and chairs, cleaning up spills and other messes caused by Magic players,
19 attending meetings / briefings, posting information about matchups, providing customer service, and
20 disqualifying and reporting players who violated of Wizards' gameplay or conduct rules.

21 17. Wizards could not conduct Magic events without judges, including hundreds of judges
22 like me, performing substantial labor, as set forth above. These judges constitute the vast majority and
23 bulk of the work force that allows Wizards to conduct its sanctioned events – regardless of the format
24 of the Wizards' sanctioned event i.e. whether it is a one-day or multi-day event. Wizards' Magic
25 sanctioned events are: Friday Night Magic, Prerelease Tournaments, Magic Game Day, Preliminary
26 Pro Tour Qualifiers, Magic Grand Prix, Grand Prix, Nationals, Pro Tour, World Magic Cup, and
27 World Championship. One-day Wizards' Magic sanctioned events can typically require up to 1-10
28 Magic judges and involve 20-200 players. Most of the multi-day Wizards' Magic sanctioned events
require approximately on 10-400 judges in order to function, with more than a 200-8000 thousand
players in attendance, who could not participate in Magic events, if not for the judges. While
participating at any of these Magic events, there was always an approximate 20:1 ratio of Magic
players to Magic judges.

1 18. Wizards maintains a database that tracks all of the events worked by its certified judges.
2 This database, called OPIS, tracks Magic judges at event, players at event, match records of players,
3 penalties of the players, each round of each tournament, and disqualifications.

4 19. When working as a Magic judge during one-day or multi-day Wizards' Magic
5 sanctioned event(s), I typically worked six to twelve hour days, often several days at a time. At multi-
6 day, Wizards' Magic sanctioned events, my work schedule generally consisted of two or three days of
7 eight hour shifts, although it was not uncommon to work ten to twelve hour shifts, with some shifts
8 lasting fourteen or fifteen hours worked in a single day. During multi- day Wizards' Magic sanctioned
9 events, on average, I worked ten-hour day shifts, on each of days I worked. At one-day Wizards'
10 Magic sanctioned events, my work schedule generally consisted of one six to ten hour shift. My hours
11 worked were similar to other judges who worked side by side with me at either one-day or multi-day
12 Wizards' Magic sanctioned events. I also learned that other Magic judges worked similar hours at one-
13 day and multi-day events as me by conferring with those judges on-line.

14 20. My work schedule at Wizards' Magic sanctioned events was determined by Wizards,
15 whose hiring and scheduling decisions were implemented by head judges operating in accordance with
16 Wizards' policies and procedures and under Wizards' supervision. In my experience, my schedule was
17 similar to other Magic judges working at the same events. Despite all the hours of work performed as
18 a judge, Wizards has never provided a mechanism in place for me to keep track of my working hours,
19 and as far as I can tell Wizards has never tracked, logged or recorded the working hours of me or any
20 other Magic Judge at magic events. However, through OPIS, one could extrapolate the amount of time
21 a Magic judge worked for Wizards at respective Wizards' Magic sanctioned event.

22 21. I wore a shirt with a "DCI Judge" or "Magic Judge" logo embroidered on the chest area
23 while working as a judge at Magic events. I was instructed by the head judge to wear a uniform
24 consisting of a "DCI Judge" or "Magic Judge" shirt and black pants at Large Magic events. At smaller
25 Magic events it was Wizards policy for me to wear the same uniform. The shirt, as part of my judge
26 uniform, was provided to me by Wizards. I am specifically aware of the announcement by Wizards in
27 or about Q3 of 2016, wherein Wizards informed the Magic judge community that tournament
28 organizers ("TO's") would hire head judges directly for the events described in this paragraph.

 22. In addition to certification and uniform requirements, Wizards exercised other common
forms of control over its Magic judges, even when it is involves personal on-line activity. Wizards'
requires Magic judges to abide by its company standards and policies at all times while representing
the Wizards brand.

1 23. Wizards always maintained the power to discipline judges. It is well known among the
2 judge community that certain kinds of things will result in Wizards suspending us as judges. Examples
3 include such things as cheating, prematurely giving away information about “to-be-released” cards,
4 poor performance reviews, providing incorrect Magic judge foils or box sets to Magic players, and at
5 times seemingly for no reason at all.

6 24. As far as I am aware, Wizards relies on judges as supposed “volunteers” to carry out the
7 foregoing work activities. On its corporate website, Wizards displays that it benefits from “2800+
8 hours volunteered annually.” Without the judges performing the foregoing activities, Magic events
9 could not function. Wizards’ ability to sanction Magic events depends on the judges, all of whom are
10 recruited from Magic players.

11 25. I have always been required to cover my own work-related expenses, including food,
12 travel and accommodation, in connection with my work as a Magic judge. Many of the events I
13 participated in required lengthy and expensive out-of-town travel and also required me to pay for hotel
14 accommodations for long weekends.

15 26. Wizards has never reimbursed me for the work-related expenses I necessarily incurred
16 in connection with the performance of my job duties as a Magic judge. This issue of Wizards’ refusal
17 to reimburse Magic judges’ expenses is a very common complaint among Magic judges.

18 27. There has never been a mechanism in place for me to keep track of my working hours
19 as a Magic judge, and as far as I can tell Wizards has never tracked, logged or recorded the working
20 hours of me or any other Judge at magic events. However, from my experience, Wizards exercised
21 control over its Magic judges at all times, even when it involves personal on-line activity. Wizards
22 commands that Magic judges abide by its company standards and policies at all times while
23 representing the Wizards brand.

24 28. Wizards has had a policy of compensating Judges at Magic events with giveaways.
25 Wizards’ giveaways have change over time, but generally have been in the form of Magic products
26 and merchandise. Wizards’ directly supports Magic judges through judge foils (Wizards products in
27 the form of cards for Magic: The Gathering) distributed in conferences, through the exemplar program,
28 and through product sent to support RPTQ events. There are many different levels product support
that Wizards distributes, including product support kits for Game Day, FNM, PPTQs, RPTQs,
Prereleases, and other events and they all vary in contents. Although the official policy is that most
product support packages are intended for Magic players, it has been a rampant practice for

1 Tournament Operators to use product support as compensation for judges, and it is commonly known
2 and relied upon by judges.

3 29. There is a secondary market for Magic products and merchandise. It is common
4 practice for judges to receive giveaways from Wizards in compensation for judging Magic events and
5 then sell them to offset their costs of attending the event.

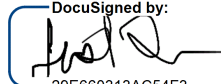
6 30. It is commonly understood among judges that Wizards intends giveaways as a way of
7 indirectly reimbursing expenses, but the delivery of and value of those giveaways has never been
8 consistent, has not regularly covered all my costs, and has generally not been in the form of cash or
9 cash equivalents but rather in product.

10 31. Wizards has always exercised total control over the giveaways it provides to Magic
11 judges at Magic events. Judges rely on the giveaways to help offset their costs of attending Magic
12 events.

13 32. One well-known example of judge suspensions occurred in 2015, when Wizards
14 suspended 13 Magic judges in the southeast region for participating in a chat room where someone
15 prematurely disclosed details about to-be-released Magic cards. I was a Magic judge in the southeast
16 region that was suspended. As a result, the suspended judges were prohibited from judging in Magic
17 related events for a period of more than 1 month and Wizards also prevented some of the Magic judges
18 from judging planned and confirmed Magic events, for which they had already spent time, money and
19 resources to attend.

20 33. When I decided to become a Magic judge, Wizards told me that Magic was the most
21 prominent organized play program in the world. Wizards instructed me to play my role as a volunteer,
22 and to follow all of Wizards' guidelines. Wizards made me understand that being committed to
23 learning all of the Magic rules and policies was instrumental in providing Magic players with the
24 experience they deserve and to ensuring that I could provide Magic players with the comprehensive
25 Wizards' gaming experience. I trusted Wizards and followed the instructions I was provided by them
26 and their agents.

27 I HEREBY DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
28 UNITED STATES THAT THE FOREGOING IS TRUE AND CORRECT. Executed this 30th day of
May, 2017 in St. Petersburg, Florida.

DocuSigned by:

29E660313AC54F3...

JUSTIN TURNER